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February 24, 2016

Via email to: mterrie@house.mi.gov
Rep. Lee Chatfield, Chair
c/o Mary Lou Terrie, Committee Clerk
Michigan House of Representatives
Local Government Committee
S-1486 House Office Building, P.O. Box 30014
Lansing, MI 48909

RE: *Bills to Amend the Michigan Local Historic District Act (House Bill 5232 and Senate Bill 720)*

Dear Chairman and Local Government Committee Members:

I write to express my concern about proposed modifications to the Local Historic District Act, as introduced in HB 5232 and SB 720.

I grew up in Traverse City, graduated from the University of Michigan in 1991, and then the University of Detroit School of Law in 1994. After graduating from law school I practiced law in Bellaire and Grand Rapids before returning to Traverse City about 20 years ago. The time I have spent living and working in Traverse City, Ann Arbor, Detroit and Grand Rapids, and traveling the State of Michigan and representing property owners and businesses has given me unique insight into the impact of the Local Historic Districts in Michigan.

In my experience, the most desirable communities to live and work in are those which involve a vibrant downtown, a strong sense of community, and recognizable characteristics of each town. In some cases, these cities form the epicenter for business development: Ann Arbor, Grand Rapids, Holland, and Traverse City are prime examples. In other cases, some of our State's most vibrant tourist destinations share the same characteristics: Petoskey, Charlevoix, and Mackinac Island are prime examples. I am personally aware of many people who choose to live and work in these communities for businesses located in another state. For example, there are many technology companies with employees who live in and work from the Traverse City area. They live here, work remotely, and travel to the west coast because of the quality of life associated with these communities. I know the same is true for other

communities, such as Ann Arbor and Holland. I have also visited with many people from out of state who continue to come back to Michigan every year because of their strong attachment to vibrant local communities. A common thread among our most vibrant towns is vitality of downtown communities, which is often anchored by historic residential or business neighborhoods.

It should be clear by now that a local historic district can be an important tool in forming this sense of place and strong community that makes some of our towns so desirable. A tour of Grand Rapids will provide a prime example of the benefit local historic districts can have. The Heritage Hill Historic District has led to a thriving residential community in downtown Grand Rapids that established a desirable, safe, downtown neighborhood. The Heartside District in Grand Rapids has transformed an area which 20 years ago was a detriment to the City into a thriving area of business and development. These districts provide a great example of how one community used the local historic district act as a tool which led to reestablishing its downtown as a world class city.

However, as with other local ordinances, the passage or rejection of a local historic district ordinance rests in the political will of the local community, not the state or federal authorities. While some communities have embraced local historic districts, others have as resoundingly rejected local historic districts for concern over regulation, perceived costs, or other matters. For example, the City of Charlevoix rejected a proposed local historic district in 2009 which would have protected its "mushroom houses" because of concerns about additional regulation.

There is no reason to believe the current legislative process is broken. Our communities are given the first and final say of when and whether to enact a local historic district based on their unique and specific circumstances. In this respect, the current Act is a fine example of the ages-old premise that "all politics are local". The proposed bill would change that dynamic by diminishing control now delegated to local communities under the Act in favor of regulatory "fixes" imposed in Lansing on any neighborhood impacted by a local historic district. For instance, the proposed legislation will cause established districts to expire without an affirmative vote by the public every ten years. I am aware of no other enabling legislation in Michigan which authorizes a local community to establish an ordinance, but would also result in its automatic repeal if not supported by a second vote.

The proposed legislation would also fundamentally change the ability of local government to legislate an outcome appropriate for its community. The proposed legislation carries what amounts to a "veto power" in favor of 34% of property owners affected by a proposed district. If the purpose of the legislation is to establish a "veto power" to preserve property rights protected by the Constitution, it is unnecessary. The illegal taking of property rights through inverse condemnation is no less applicable to local historic districts than to other takings analyses.

But there are clear limitations on the power of local governments to wield their authority. While preservation of historic places is a public purpose recognized by the United States Supreme Court in *Penn Central v New York City*, 438 US 104 (1978), local governments may not unreasonably deprive a property owner of his private property rights. See *K&K Construction Inc. v JFK Investment*, 267 Mich App 523 (2005).

Despite the substantial processes required before a district is established, and the private property rights which may not be infringed by the community, the proposed legislation would grant a "veto power" to a vocal minority. The absurdity of this provision can be seen by comparing the effect a similar power would have on zoning laws. In the case of both local historic districts and zoning ordinances, property owners who will be affected by a new or modified ordinance have the ability to influence the adoption or rejection, and procedural or substantive provisions of legislation, and property owners throughout the state have taken the opportunity to do that. Yet, if and when consensus is reached to adopt a zoning ordinance, it cannot be held hostage by 34% of property owners who object to a change in zoning that might affect the use or value of their property. To do so would unreasonably impair the capacity of local officials to recommend and the municipality to adopt legislation which will shape the future of their community – something which our state has recognized as vital to good local government since before it adopted zoning enabling acts in 1943. Yet, such a "veto power" is precisely the relief the legislation will afford a small minority of residents in any community.

The authority of communities to establish and enforce a local historic district are not unlike other forms of reasonable regulation. Where such regulations are reasonable to achieve an important purpose, they will be upheld by our courts. However, if they go too far, and unreasonably deprive a property owner of his property rights, that governmental action will not be tolerated. The analysis is just as applicable to a local historic district as it is to a zoning ordinance, and there seems no important justification for giving property owners in a proposed historic district an extra set of protections which is not applied elsewhere.

It is clear that the Local Historic District Act, as now established, has been an important tool to the development and redevelopment of some of the most desirable communities in Michigan. There is no dispute that historic districts throughout Michigan have permitted communities to use their local resources and streetscapes for community revitalization, providing a greater diversity of income and cultural background in neighborhoods, in increasing property values, and in increasing job opportunities. Research has shown that repeatedly. At the same time, there is no question that other communities have rejected the use of historic districts. Based on the history of this State, there is no reason to effectively eliminate historic districts by imposing a sunset provision or granting an unreasonable "veto power" to a minority.

I urge you to oppose House Bill 5232 and Senate Bill 720. I am available to discuss this matter with you further at your convenience.

Sincerely,

BISHOP & HEINTZ, P.C.



Steven R. Fox

SRF/jmc

cc: Governor Rick Snyder; Martha McFarlane Fase, State Historic Preservation Office; Nancy Finegood, Michigan Historic Preservation Network; Erik Hein, National Conference of State Historic Preservation Officers; Amy Elliott Bragg, Preservation Detroit; Paige Pollard, National Alliance of Preservation Commissions; Megan J. Brown, National Park Service; Ted Ligibel, Pam O'Connor, Jim Turner, National Trust Advisors (MI), Rep. Larry Inman; Senator Wayne Schmidt; Senator Peter MacGregor; Rep. Chris Afendoulis; Stephanie Meeks, President of NTHP; Brian Conway, State Historic Preservation Office